

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, and)	
STATE OF MISSOURI,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. _____
)	
J.H. BERRA CONSTRUCTION CO.,)	
INC., JHB PROPERTIES, INC.,)	
J.H. BERRA HOLDING CO., INC.,)	
JMB No. 2, LLC, and)	
CMB RHODES, LLC)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiffs, the United States of America, by authority of the Attorney General of the United States, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, Attorney General, the Missouri Clean Water Commission, and the Missouri Department of Natural Resources, by and through their undersigned attorneys, allege as follows:

INTRODUCTION

1. This is a civil action for injunctive relief and civil penalties brought pursuant to the Clean Water Act, 33 U.S.C. § 1319(b), (d), against JMB No. 2, LLC, CMB Rhodes, LLC, J.H. Berra Construction Company, Inc., JHB Properties, Inc., and J.H. Berra Holding Co., Inc. for the discharge of pollutants without a permit in violation of 33 U.S.C. §§ 1311 and 1344, and for violations of the conditions of the general permit issued by the State of Missouri pursuant to

the Missouri Clean Water Law and the federal Clean Water Act, 33 U.S.C. § 1342, for discharge of pollutants from storm water from construction sites.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 33 U.S.C. § 1319(b).

3. This Court has jurisdiction over the State of Missouri's claims pursuant to the Missouri Clean Water law, Chapter 644, RSMo, under the supplemental jurisdiction doctrine.

4. Venue is proper in this District pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395, because the Defendants are incorporated in and conduct business in this District, and because the violations occurred in this District.

5. Notice of the commencement of this action has been given to the State of Missouri in accordance with 33 U.S.C. § 1319(b).

6. Many of the violations at issue in this case occurred within the boundaries of the City of Wildwood, Missouri ("the City"). The City has been notified of this action and has expressed an intent to seek intervention as a matter of right pursuant to 33 U.S.C. § 1365(b)(1)(B).

DEFENDANTS

7. J.H. Berra Construction Company, Inc. ("Berra Construction") is a corporation formed under the laws of the State of Missouri and is a "person" as defined in 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, and § 644.016, RSMo.

8. Berra Construction has its primary place of business and conducts business within the Eastern District of Missouri.

9. Berra Construction performs grading, grubbing, clearing, and earth-moving for commercial and residential construction throughout the State of Missouri and provided such services at the three home developments that are the subject of this action.

10. J.H. Berra Holding Company is a corporation formed under the laws of the State of Missouri and is a "person" as defined in 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, and § 644.016, RSMo.

11. Upon information and belief, J.H. Berra Holding Company is a shareholder or affiliate of Berra Construction and, upon information and belief, participated in the development and control of plans and specifications for land disturbing activities at, at least, the Enclaves at Cherry Hills.

12. JHB Properties, Inc. is a corporation formed under the laws of the State of Missouri and is a "person" as defined in 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, and § 644.016, RSMo.

13. JHB Properties, Inc. is a member of JMB No. 2, LLC and, upon information and belief, participated in the development and control of plans and specifications for land disturbing activities at, at least, the Enclaves at Cherry Hills.

14. JMB No. 2, LLC ("JMB") is a limited liability corporation formed pursuant to the laws of the State of Missouri and is a "person" as defined in 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, and § 644.016, RSMo.

15. JMB has its primary place of business and conducts business within the Eastern District of Missouri.

16. JMB at relevant times to this action owned all or a portion of the land being

developed as The Enclaves at Cherry Hills, an approximately 130 acre residential development located at Old Manchester Road and Cherry Hills Meadows Road in the City of Wildwood, St. Louis County, Missouri.

17. CMB Rhodes, LLC ("CMB") is a limited liability corporation formed pursuant to the laws of the State of Missouri and is a "person" as defined in 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, and § 644.016(14), RSMo.

18. CMB has its primary place of business and conducts business within the Eastern District of Missouri.

19. CMB at relevant times to this action owned all or a portion of the land being developed as Countryside, an approximately 115 acre residential property west of Sommers Road between Highways N and DD in St. Charles County, Missouri.

STATUTORY AND REGULATORY AUTHORITY

20. The Clean Water Act is designed to restore and maintain the chemical, physical and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

21. To accomplish the objectives of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in certain circumstances, including in compliance with a permit issued pursuant to 33 U.S.C. § 1342 or 33 U.S.C. § 1344.

22. The Clean Water Act requires permits for discharges of storm water runoff. 33 U.S.C. § 1342(p).

23. Federal regulations define the term "storm water discharge associated with industrial activity" to include, among other things, storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of

one or more acres of total land area. 40 C.F.R. § 122.26(b)(14)(x). Those regulations also set forth the permit application requirements for storm water discharges. 40 C.F.R. § 122.26.

24. Pursuant to the Clean Water Act, states may issue their own storm water permits if they are authorized by EPA to do so. The State of Missouri has been authorized to issue storm water permits and has issued Missouri State Operating Permit, General Permit MO-R101000 through MO-R109000 ("Missouri General Permit").

25. The Missouri General Permit requires a person to obtain coverage under the Missouri General Permit if that person engages in construction defined as industrial activity by 40 C.F.R. § 122.26(b)(14)(x) and either owns the property on which the construction is occurring, has operational control of construction project plans and specifications, or has day-to-day operational control of those activities which are necessary to ensure compliance with permit conditions. 10 Mo. CSR 20-6.200.

26. Any person subject to the Missouri General Permit is required to develop a storm water pollution prevention plan ("SWPPP") which sets forth a plan for minimizing and eliminating to the extent feasible discharges of storm water associated with construction activities. Under the Missouri General Permit, the SWPPP must meet specific requirements and include certain information (such as the order and schedule of construction activities, the soil type, a description of the drainage patterns at the site, an identification of sensitive resources such as endangered species and historic buildings, and which person is responsible for implementing each portion of the plan).

27. At the heart of the SWPPP is the selection of best management practices ("BMPs") designed to eliminate to the extent feasible the migration of pollution from

construction sites into the nation's waters. These practices include measures to prevent erosion (such as the scheduling of the project to minimize the amount of land that is being graded at any particular time) and measures to capture sediment before it leaves the site (such as silt fences and sedimentation basins).

28. The Missouri General Permit also requires the permittee to implement the SWPPP and to properly implement and maintain the BMPs to eliminate, to the extent feasible, discharges of storm water to the nation's waters.

29. The Missouri General Permit imposes additional requirements, including those for inspection of the site during construction, updating of the SWPPP to reflect changing site conditions, and final stabilization of the site followed by termination of permit coverage.

30. The Clean Water Act requires a separate permit program to authorize the placement of dredge and fill materials into navigable waters. *See* 33 U.S.C. § 1344.

31. Federal regulations define "fill materials" to include "rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States." 33 C.F.R. § 323.2(e)(2).

32. EPA and the U.S. Army Corps of Engineers issued a general permit ("404 General Permit") authorizing the placement of dredge and fill under certain conditions and in compliance with the terms of the permit. *See* 67 Fed. Reg. 2020 (Jan. 15, 2002).

33. The Missouri General Permit is explicit that the authorization to discharge storm water from construction activities does not constitute authorization to proceed under the 404 General Permit. Rather, a party seeking to place dredge and fill in navigable waters as part of

construction activity must obtain coverage under *both* the storm water general permit and the 404 General Permit.

34. The Clean Water Act authorizes the Administrator of EPA "to commence a civil action for appropriate relief, including a permanent or temporary injunction," when any person is in violation of 33 U.S.C. § 1311 or of any permit issued pursuant to 33 U.S.C. § 1342 or 1344. 33 U.S.C. § 1319(b)

35. The Clean Water Act, in conjunction with the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and the Civil Monetary Inflation Rule, 61 Fed. Reg. 69360 (December 31, 1996), provides, in part, that any person who violates 33 U.S.C. §§ 1311 or 1344, or any permit issued pursuant to 33 U.S.C. §§ 1342 or 1344, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter. 40 C.F.R. § 19.4.

36. Section 644.076.1, RSMo, authorizes a civil action for injunctive relief to prevent violations of the Missouri Clean Water Law and for the assessment of a penalty not to exceed \$10,000 per day for each day or part thereof on which a violation occurred or continues to occur, or both, as the Court deems proper.

FACTUAL ALLEGATIONS

37. This case involves discharges of pollutants to navigable waters without a permit and violations of the Missouri General Permit at three residential development construction sites in Missouri: The Enclaves at Cherry Hills, Countryshire, and Seckman Lakes Estates. In addition, it involves violations of the 404 General Permit at The Enclaves at Cherry Hill.

The Enclaves at Cherry Hills

38. On or about March 3, 1995, three St. Louis area developers, JHB Properties, Inc., Mayer Enterprises, Inc., and The Jones Company Custom Homes, L.L.C. formed JMB as a limited liability corporation with the purpose of developing almost 150 acres located at Old Manchester Road and Cherry Hills Meadows Road in the City of Wildwood, Missouri, as a residential community known as The Enclaves at Cherry Hills ("The Enclaves").

39. As the owner of The Enclaves, JMB was a person obligated to obtain authorization to discharge storm water from the construction activities at The Enclaves and to comply with the permit once authorization was granted.

40. On or about February 5, 2003, JMB entered into a contract with Berra Construction to provide services at The Enclaves, including the grading, clearing and grubbing at the Site.

41. As the entity actively engaged in land disturbing activities at The Enclaves, and as the entity with day-to-day control over site activities and responsibility for installation and maintenance of the BMPs at The Enclaves, Berra Construction was a person obligated to obtain authorization to discharge storm water from the construction activities at the Enclaves or to ensure that permit coverage had been obtained for the site and to comply with the permit once authorization was granted.

42. On November 10, 1999, JMB received authorization to proceed under the Missouri General Permit and was issued permit number MO-R103687. This authorization was terminated on September 5, 2003 and JMB was reissued authorization as permit number MO-R105782.

43. In its permit application, JMB indicated that the development would comprise 148.76 acres with 113 acres to be disturbed.

44. The Enclaves development is located in the SW 1/4 Section 6, Township 44 North, Range 4 East in St. Louis County within the City of Wildwood, Missouri. The surface water run-off from the property discharges to at least a tributary to Caulk's Creek which is a tributary of waters that are navigable in fact and is a navigable water within the meaning of 33 U.S.C. § 1362(7). Caulk's Creek flows into Bonhomme Creek, which flows into the Missouri River.

45. While JMB owned the property, Berra Construction began clearing, grading, and grubbing the land for The Enclaves in Spring of 2003.

46. Shortly after Berra Construction commenced land disturbing activities at The Enclaves, the City of Wildwood began receiving complaints from downstream neighbors of the site. These downstream neighbors reported observing heavy sediment loads entering Upper Lake Chesterfield from the construction activities at The Enclaves.

47. The City conducted numerous inspections of the construction activities at The Enclaves and determined that these activities were resulting in heavy sediment discharges from the site, due to Berra Construction Company and JMB's failure to install adequate BMPs and their failure to adequately inspect and maintain those BMPs that had been installed. Among the most significant failures to comply with the permit requirements was Berra Construction Company's failure to temporarily stabilize areas of the Site that had been cleared and/or graded, but were inactive. These inactive areas were subject to erosion during storm events and that erosion resulted in the discharge of sediment to the receiving streams.

48. The City issued at least two stop work orders to JMB during the first 12 months after commencement of grading activity to address the violations at The Enclaves. Downstream neighbors and City inspections of the site continued to report heavy sediment loads coming into Upper Lake Chesterfield, causing turbidity and discoloration of the lake in violation of the Missouri State Water Quality Standards.

49. In the Spring of 2004 and thereafter, both the Missouri Department of Natural Resources ("MDNR") and EPA conducted inspections of the construction activities at The Enclaves.

50. During these inspections, EPA and MDNR officials observed a number of violations of the Missouri General Permit, including but not necessarily limited to: (i) failure to include required information in the SWPPP, such as the intended sequence of construction activities and the temporary and permanent stabilization practices to be used at the site; (ii) failure to update the SWPPP to include more effective BMPs when excessive sediment discharges occurred from the site; (iii) failure to conduct adequate inspections in accordance with the schedule required by the permit; (iv) failure to install or install correctly the BMPs identified in the SWPPP, including the failure to stabilize inactive areas of the construction site in accordance with the schedule and requirements of the permit; and (v) failure to maintain the BMPs to ensure their continued effectiveness.

51. In addition, EPA and the Army Corps of Engineers have both inspected the Site and determined that Berra Construction Company installed several feet of silt fence and rock material in the course of Caulk's Creek to create an improvised sedimentation basin. These dredge and fill materials had been placed in Caulk's Creek without authorization under the 404

General Permit.

52. All three governments, the United States, the State of Missouri, and the City, have repeatedly notified JMB and/or Berra Construction company that the construction activities at The Enclaves have violated the City's grading ordinances, the Missouri Clean Water Law, and the Clean Water Act. These notices include a January 13, 2004 City of Wildwood Ordinance Violation, Warning Notice, a March 17, 2004 MDNR Notice of Violation, a May 28, 2004 MDNR Notice of Violation, and a May 26, 2004 EPA Administrative Compliance Order.

Countryshire

53. On September 29, 2003, John H. Berra, Jr. incorporated CMB Rhodes, LLC ("CMB"), whose members include JHB Properties, Inc.

54. CMB was formed for the purpose of developing a 115 acre residential property west of Sommers Road between Highways N and DD in O'Fallon, Missouri, known as the Countryshire development ("Countryshire"). The site plans call for more than 200 units including villas, single and multi-family homes, along with a recreation center and two permanent lakes.

55. Runoff from the Countryshire site discharges to unnamed tributaries of Dardenne Creek, which is a perennial tributary of the Mississippi River and a navigable water within the meaning of 33 U.S.C. § 1362(7).

56. On or about February 11, 2006, CMB received authorization to proceed and was issued permit number MOR-109I69.

57. Berra Construction began grading and clearing Countryshire in or about July or August 2005.

58. Shortly after land disturbing activities began, neighbors of the Countryshire site notified the State of Missouri that excessive sediment was leaving the site and entering navigable waters.

59. Inspection reports prepared by CMB's own contractors note that sediment from the Countryshire site left the site and entered the drainage channels.

60. Between August 2005 and June 2006, EPA and MDNR inspected the Countryshire site. These inspections revealed numerous violations of the Missouri General Permit, including: (i) discharges of heavy sediment loads to several tributaries to Dardenne Creek creating turbidity and sedimentation in violation of the Missouri Water Quality Standards; (ii) failure to stabilize bare soils in areas of the site that had been inactive for more than seven days; (iii) failure to properly maintain BMPs; (iv) failure to have an adequate SWPPP, particularly the failure to update the SWPPP to reflect changing Site conditions; (v) failure to install BMPs identified in the SWPPP or improper installation of such BMPs; and (vi) failure to conduct and/or properly document inspections of the site.

61. In at least August and September 2005, state inspectors, as well as neighbors of the Countryshire site observed turbidity in a tributary to Dardenne Creek caused by discharges from the site.

62. MDNR and EPA notified CMB and Berra Construction of these violations on numerous occasions, including by providing CMB a copy of EPA's inspection report, a September 7, 2005 MDNR notice of violation, November 3, 2005, MDNR notice of violation, November 15, 2005, MDNR notice of violation and June 22, 2006, MDNR letter of warning.

Seckman Lakes Estates

63. On February 10, 1998, Mayer Homes, Inc. applied for authorization to discharge storm water from construction activities at an approximately 112 acre construction site as part of the Seckman Lakes Estates ("Seckman Lakes") residential development. The permit application indicated that approximately 80 acres of land would be disturbed during construction.

64. Run off from Seckman Lakes flows directly to Rock Creek, a perennial tributary of the Mississippi River and a navigable water within the meaning of 33 U.S.C. § 1362(7).

65. On or about November 3, 1997, Mayer Homes, Inc. contracted with Berra Construction to perform the grading, clearing, excavation, and grubbing at Seckman Lakes. Berra Construction's responsibility included coordinating subcontractors at the site, overseeing, installing, inspecting, and maintaining the BMPs, and preparing a SWPPP for the Seckman Lakes project.

66. Berra Construction Company commenced ground disturbing activities at Seckman Lakes in or about 1998 and has been engaged in clearing, grading, and other ground disturbing activities at that Site continuously since then.

67. Mayer Homes, Inc. obtained permit number MO-R102956 for Seckman Lakes on March 19, 1998. This authorization expired in or about January 2, 2002.

68. The State of Missouri did not issue authorization to discharge from Seckman Lakes until December 8, 2005.

69. Upon information and belief, between about January 2002 and December 2005, Berra Construction Company was actively engaged in construction activity that resulted in discharges of storm water containing significant amounts of sediment from Seckman Lakes to

the receiving stream.

70. EPA inspected Seckman Lakes on October 19, 2005. During that inspection, EPA found numerous violations of the Clean Water Act and/or the Missouri General Permit. First, EPA determined that Berra Construction had been actively engaged in construction activity at the Site, and that there had been discharges of sediment from the site to navigable waters, during the time period in which no permit had been issued for such construction activity. Second, EPA determined that Berra Construction had not complied with the requirements of the General Permit in several ways, including failure to conduct and/or adequately document site inspections and failure to install and maintain BMPs, especially stabilization practices for inactive areas of the construction site.

71. EPA has notified Berra Construction Company of the violations that occurred at this Site, by among other things, providing Berra Construction Company with a copy of its inspection report.

FIRST CLAIM FOR RELIEF

AGAINST JMB, JHB PROPERTIES, INC., J.H. BERRA HOLDING COMPANY,
AND BERRA CONSTRUCTION
FOR FAILURE TO COMPLY WITH THE REQUIREMENTS
OF THE CLEAN WATER ACT AND THE MISSOURI GENERAL PERMIT
AT THE ENCLAVES

72. The United States alleges and incorporates by reference Paragraphs 1 through 52.

73. JMB, J.H. Berra Holding Co., Inc., and JHB Properties, Inc. violated the terms and conditions of Missouri General Permit authorizations MOR-103687 and MO-R105782 on numerous occasions, including but not limited to the following violations: failing to prepare an adequate SWPPP, install or have installed adequate BMPs, conduct or have conducted adequate

inspections of the Site, and by discharging storm water that resulted in a violation of the Missouri Water Quality Standards.

74. Berra Construction Company violated the terms and conditions of Missouri General Permit authorizations MOR-103687 and MO-R105782 on numerous occasions, including but not limited to the following violations: failing to prepare an adequate SWPPP, install or have installed adequate BMPs, conduct or have conducted adequate inspections of the Site, and by discharging storm water that resulted in a violation of the Missouri Water Quality Standards.

75. Unless enjoined, these violations will continue or will recur at other construction sites.

76. Pursuant to 33 U.S.C. § 1319, each defendant is liable for injunctive relief and civil penalties of up to \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter.

77. Pursuant to § 644.076.1, RSMo, each defendant is liable for injunctive relief and civil penalties of up to \$10,000 per day for each day, or part thereof, the violation occurred or continues to occur, or both.

SECOND CLAIM FOR RELIEF

AGAINST JMB, JHB PROPERTIES, INC., J.H. BERRA HOLDING COMPANY
AND BERRA CONSTRUCTION
FOR FAILURE TO COMPLY WITH THE REQUIREMENTS
OF THE CLEAN WATER ACT AND MISSOURI CLEAN WATER LAW
AT THE ENCLAVES

78. The United States alleges and incorporates by reference Paragraphs 1 through 52.

79. JMB, JHB Properties, Inc., J.B. Berra Holding Company, and Berra Construction

placed dredge and fill materials into Caulk's Creek, a water of the United States, without a permit. These materials remain in Caulk's Creek in violation of the requirements of 33 U.S.C. § 1344.

80. Unless enjoined, these violations will continue.

81. Pursuant to 33 U.S.C. § 1319, JMB, JHB Properties, Inc., J.B. Berra Holding Company, and Berra Construction are liable for injunctive relief and civil penalties of up to \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter.

82. Pursuant to § 644.076.1, RSMo, each defendant is liable for injunctive relief and civil penalties of up to \$10,000 per day for each day, or part thereof, the violation occurred or continues to occur, or both.

THIRD CLAIM FOR RELIEF

AGAINST BERRA CONSTRUCTION FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE CLEAN WATER ACT AND THE MISSOURI GENERAL PERMIT AT SECKMAN LAKES

83. The United States alleges and incorporates by reference Paragraphs 1 through 36 and 63-71.

84. Berra Construction Company violated the Clean Water Act by discharging sediment from the Seckman Lakes site to a navigable water without a permit during the period between approximately January 2002 and December 2005 and violated the terms and conditions of Missouri General Permit authorization number MO-R109N73 on numerous occasions, by, at least, failing to prepare an adequate SWPPP, failing to install or have installed adequate BMPs, failing to conduct or have conducted adequate inspections of the Site, and by discharging storm

water that resulted in a violation of the Missouri Water Quality Standards.

85. Unless enjoined, these violations will continue or will recur at other construction sites.

86. Pursuant to 33 U.S.C. § 1319, each defendant is liable for injunctive relief and civil penalties of up to \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter.

87. Pursuant to § 644.076.1, RSMo, each defendant is liable for injunctive relief and civil penalties of up to \$10,000 per day for each day, or part thereof, the violation occurred or continues to occur, or both.

FOURTH CLAIM FOR RELIEF

AGAINST CMB AND BERRA CONSTRUCTION FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE CLEAN WATER ACT AND THE MISSOURI GENERAL PERMIT AT COUNTRYSHIRE

88. Plaintiffs allege and incorporates by reference Paragraphs 1 through 36 and 53-62.

89. CMB violated the terms and conditions of Missouri General Permit authorization MO-R109I69 at the Countryshire development on numerous occasions, including but not limited to the following violations: failing to prepare an adequate SWPPP, failing to install or have installed adequate BMPs, and failing to conduct or have conducted adequate inspections of the Site.

90. CMB violated the terms and conditions of Missouri General Permit authorization MO-R109I69 at the Countryshire development by discharging storm water contaminated with sediment into a tributary of Dardenne Creek which flows into the lake within the Foxwood

Estates Subdivision and, as a result thereof, violated Missouri's water quality standards.

91. Berra Construction Company violated the terms and conditions of Missouri General Permit authorization MO-R109I69 at the Countryshire development on numerous occasions, including but not limited to the following violations: failing to prepare an adequate SWPPP, install or have installed adequate BMPs, conduct or have conducted adequate inspections of the Site, and by discharging storm water that resulted in a violation of the Missouri Water Quality Standards.

92. Berra Construction Company violated the terms and conditions of Missouri General Permit authorization MO-R109I69 at the Countryshire development by discharging storm water contaminated with sediment into a tributary of Dardenne Creek which flows into the lake within the Foxwood Estates Subdivision and, as a result thereof, violated Missouri's water quality standards and/or Berra Construction Company discharged pollutants from the Countryshire development to navigable waters without a permit.

93. Unless enjoined, these violations will continue or will recur at other construction sites.

94. Pursuant to 33 U.S.C. § 1319, each defendant is liable for injunctive relief and civil penalties of up to \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter.

95. Pursuant to § 644.076.1, RSMo, each defendant is liable for injunctive relief and civil penalties of up to \$10,000 per day for each day, or part thereof, the violation occurred or continues to occur, or both.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs the United States of America and the State of Missouri respectfully request that this Court:

A. Order Defendants to comply with the terms of the Clean Water Act, the Missouri Clean Water Law, and the terms and conditions of the Missouri General Permits and the 404 General Permit at future construction sites, including by, among other things, the development and implementation of appropriate SWPPPs, the application of BMPs to minimize or eliminate discharges of pollutants from the site, and the implementation of corporate policies designed to achieve and assure compliance with the applicable general permit and the Act;

B. Order Defendants to bring The Enclaves, Countryshire, and Seckman Lakes Estates into compliance with the Missouri General Permit, the 404 General Permit, the Clean Water Act, and the Missouri Clean Water Law and to remedy the violations at each of the construction sites;

C. Order Defendants to mitigate the effects of each of their violations;

D. Assess civil penalties against each Defendant of up to \$27,500 or \$32,500 per day, as appropriate, for each violation;

E. Assess against CMB and Berra Construction an appropriate civil penalty authorized by law for day of each violation of the Missouri Clean Water Law and implementing regulations;

F. Award the United States and the State of Missouri their costs and disbursements in this action; and

G. Grant any such further relief as this Court deems just and proper.

Respectfully submitted,

[REDACTED]

RONALD J. TENPAS
Acting Assistant Attorney General
Environment & Natural Resources Division

[REDACTED]

SARAH D. HIMMELHOCH
ERIC ALBERT
Trial Attorneys
Environmental Enforcement Section
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-0180

CATHERINE L. HANNAWAY
United States Attorney

OF COUNSEL:

KRISTINA KEMP
Assistant Regional Counsel
U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS

JEREMIAH W. (JAY) NIXON
~~Attorney General~~

~~HARRY D. BOZOIAN~~
Assistant Attorney General
MBE # 37535
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-8803
Fax: (573) 751-8796